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5 PERMANENT SELECT COMMITTEE ON INTELLIGENCE,

6 joint with the

7 COMMITTEE ON OVERSIGHT AND REFORM

8 and the

9 COMMITTEE ON FOREIGN AFFAIRS,

10 U.S. HOUSE OF REPRESENTATIVES,

11 WASHINGTON, D.C.

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15 DEPOSITION OF: MICHAEL DUFFEY

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20 Tuesday, November 5, 2019

21 Washington, D.C.

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24 The deposition in the above matter was held in Room HVC-304,

25 Capitol Visitor Center, commencing at 2:02 p.m.

1 Present: Representatives Schiff and Quigley.

2 Also Present: Representatives Raskin, Maloney, and Meadows.

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2 Appearances:

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5 For the PERMANENT SELECT COMMITTEE ON INTELLIGENCE:

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7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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15 For the COMMITTEE ON OVERSIGHT AND REFORM:

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17 [REDACTED]

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20 For the COMMITTEE ON FOREIGN AFFAIRS:

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22 [REDACTED]

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2 THE CHAIRMAN: The committee will come to order. We'll begin
3 today's proceeding.

4 This is a deposition of Associate Director Michael Duffey
5 conducted by the House Permanent Select Committee on Intelligence, in
6 coordination with the Committees on Foreign Affairs and Oversight and
7 Reform, pursuant to the impeachment inquiry announced by the Speaker
8 of the House on September 24, 2019, and affirmed by House Resolution
9 660 on October 31, 2019.

10 On October 11, 2019, the committees sent a letter to Mr. Duffey
11 requesting that he voluntarily appear for a deposition on October 23,
12 2019.

13 On October 21, 2019, the Office of Management and Budget informed
14 the committees that Mr. Duffey would not voluntarily appear at a
15 deposition per the White House counsel's October 8, 2019, letter.

16 As a result, on October 25, 2019, the committees issued a subpoena
17 compelling Mr. Duffey's mandatory appearance at a deposition today.

18 Yesterday, OMB reasserted its position that, quote, "as directed
19 by the White House counsel's October 8, 2019, letter, OMB will not
20 participate in this partisan, unfair impeachment inquiry," unquote.
21 OMB argues that the impeachment inquiry lacks basic due-process
22 protections and relies on an Office of Legal Counsel opinion that the
23 committee cannot lawfully bar agency counsel from depositions.

24 This new and shifting rationale from the White House, like the
25 others it has used to attempt to block witnesses from appearing to

1 provide testimony about the President's misconduct, has no basis in
2 law or the Constitution and is a serious affront to decades of precedent
3 in which Republicans and Democrats have used exactly the same
4 procedures to depose executive branch officials without agency counsel
5 present, including some of the most senior aides to multiple previous
6 Presidents.

7 I would note for my Republican colleagues that this rule was
8 supported by Acting White House Chief of Staff Mick Mulvaney when he
9 served as a member of the Oversight Committee and by Secretary of State
10 Mike Pompeo when he served as a member of the Benghazi Select Committee.

11 In fact, some of the same Members and staff currently conducting
12 depositions as part of the present impeachment inquiry participated
13 directly in depositions without agency counsel during the Clinton,
14 Bush, and Obama administrations.

15 The basis for this process is straightforward. It ensures that
16 the committees are able to depose witnesses in furtherance of our
17 investigation without having representatives of the agency or office
18 under investigation in the room to interfere or improperly learn
19 details about the investigation.

20 The rule nevertheless protects the rights of witnesses by
21 allowing them to be accompanied in the deposition by personal counsel,
22 which was offered to Mr. Duffey.

23 Other than the White House counsel's objection to longstanding
24 congressional practice, the committees are aware of no other valid
25 constitutional privilege asserted by the White House to direct

1 Mr. Duffey to defy this subpoena.

2 To the extent the White House believes that an issue could be
3 raised at the deposition that may implicate a valid privilege, the
4 White House may seek to assert that privilege with the committee in
5 advance of the deposition. To date, as has been the case in every other
6 deposition as part of this inquiry, the White House has not done so.

7 I am entering into the record for the impeachment inquiry the
8 following documents.

9 Exhibit 1 is the committee's letter dated October 11 requesting
10 that Mr. Duffey voluntarily appear for a deposition.

11 Exhibit 2 is the committee's cover letter to the subpoena dated
12 October 25.

13 Exhibit 3 is the Intelligence Committee's subpoena to
14 Mr. Duffey, which was served on October 25.

15 Exhibit 4 is OMB's letter to the committees dated November 4
16 stating that the White House instructed him not to appear.

17 [Majority Exhibit No. 1
18 was marked for identification.]

19 [Majority Exhibit No. 2
20 was marked for identification.]

21 [Majority Exhibit No. 3
22 was marked for identification.]

23 [Majority Exhibit No. 4
24 was marked for identification.]

25 THE CHAIRMAN: Mr. Duffey has neither presented a valid

1 constitutional reason to defy a duly authorized subpoena nor have the
2 committees received a court order relieving him of his obligation to
3 appear today.

4 Despite his legal obligations to appear, Mr. Duffey is not
5 present here today and has therefore defied a duly authorized
6 congressional subpoena. The committees may consider Mr. Duffey's
7 defiance of his subpoena as evidence in a future contempt proceeding.

8 This subpoena remains in full force.

9 The committees reserve all of their rights, including the right
10 to raise this matter at a future Intelligence Committee proceeding at
11 the discretion of the chair of the committee.

12 This effort by the President to attempt to block Mr. Duffey from
13 appearing can only be interpreted as a further effort by the President
14 and the White House to obstruct the impeachment inquiry and Congress's
15 lawful and constitutional functions.

16 Moreover, the obstruction does not exist in a vacuum. Over the
17 past several weeks, we have gathered extensive evidence of the
18 President's abuse of power related to pressuring Ukraine to initiate
19 investigations that would benefit the President personally and
20 politically and sacrifice the national interest in attempting to do
21 so.

22 Some of that evidence has revealed that Mr. Duffey was a
23 percipient witness to misconduct, which may include the President's
24 misconduct, including President Trump's decision to place a hold on
25 Ukraine security assistance and concerns about the legality of the

1 hold.

2 We can only infer, therefore, that the White House's efforts to
3 block Mr. Duffey from testifying is to prevent the committees from
4 learning additional evidence of Presidential misconduct and that
5 Mr. Duffey's testimony would corroborate and confirm other witnesses'
6 accounts of such misconduct, including Mr. Mulvaney's admission from
7 the White House Briefing Room that the Ukraine military aid was frozen
8 by the President in order to pressure Ukraine into initiating
9 investigations into the Bidens and the 2016 election.

10 With that, I'm happy to yield to Mr. Meadows.

11 Minority counsel?

12 MR. CASTOR: I just want to note for the record that some of these
13 witnesses that have not had the ability to hire personal counsel may
14 have been able to participate if they were accompanied by agency
15 counsel.

16 If there's a concern about them being represented by agency
17 counsel from their own agency, there are workarounds that we've done
18 in the past, where they get a government lawyer from DOJ to join them.
19 And that might be an opportunity -- you know, a lawyer not connected
20 with the investigation, not connected with the agency under
21 investigation. That may be a way to get some of these witnesses in
22 the door and get additional facts for the investigation but not
23 compromise some of the issues you mentioned.

24 So thank you.

25 THE CHAIRMAN: I appreciate that, counsel. I would just say for

1 the record that, to my knowledge, this witness has indicated no issue
2 in terms of finding counsel. Their objection is merely the one
3 transmitted by the White House.

4 And, with that, the proceedings are concluded and we are
5 adjourned.

6 [Whereupon, at 2:08 p.m., the deposition was concluded.]